

P19572

ORDER: WR 94-2

SOURCE: Various Diversion
Points in Harlan Creek
Drainage

COUNTY: San Benito

BY THE BOARD:

On November 18, 1993, the State Water Resources Control Board (State Water Board) entered Order No. WR 93-8. The order granted a petition for an extension of time until December 31, 1996 for the permittee J. E. Jensen to complete the application to beneficial use of water diverted under Permit 19572. The time extension was granted subject to provisions of a "stipulated physical solution" agreed to by the parties at the time of the water right hearing, and also subject to certain permit amendments specified in Order No. WR 93-8. The order was mailed to interested parties on November 23, 1993.

On December 20, 1993, the State Water Board received a petition for reconsideration of the order, filed on behalf of Ann Marie Sayers. Background information concerning Order No. WR 93-8 is summarized in Section 2 below. The actions requested in the petition for reconsideration and the State Water Board's analysis of the points raised in the petition are discussed in Sections 3.0 through 4.5 of this order.

2.0 BACKGROUND

2.1 Permit 19572

The State Water Board issued Permit 19572 to J.E. Jensen on July 25, 1985. The permit authorized diversion of 25 acre-feet per annum (afa) to storage in four small reservoirs, direct diversion of 1 cubic foot per second from April 1 to September 1 of each year for irrigation, and direct diversion of 550 gallons per day on a year around basis for domestic use. The maximum amount of water authorized for diversion under the permit was 128.5 afa. The permit authorized diversion from Harlan Creek and an unnamed tributary to Harlan Creek for domestic use and irrigation on 100 acres within an area specified in the permit.

2.2 Petitions for Time Extension and Change in Points of Diversion

Permit 19572 required completion of construction work by December 1, 1988 and complete application of water to beneficial use by December 1, 1989. On April 10, 1990, permittee filed a petition for extension of time to complete the project and develop full beneficial use of water. Water Code Section 1398 authorizes time extensions for good cause shown.

On May 31, 1990, permittee filed a change petition which requested authorization for two new points of diversion for diversion from the underflow of Harlan Creek. In order for the State Water Board to approve a change petition, the petitioner must show that the change will not operate to the injury of any legal user of the water involved. (Water Code 1702). In addition, the change must not in effect initiate a new water right. (Title 23, California Code of Regulations Section 791)

On August 13, 1990, Ms. Sayers and five others filed a protest against the changes proposed in Jensen's petitions.

2.3 Procedure for Acting Upon Minor Protested Petitions

Water Code Sections 1704.1 through 1704.4 establish an expedited procedure for acting upon "minor" change petitions which are protested. Minor petitions are defined as involving direct diversion not in excess of three cubic feet per second or diversion to storage not in excess of 200 acre-feet. (Water Code Section 1704.4).

The expedited procedure calls for the Division of Water Rights to conduct a field investigation of the issues raised by the petition and any related protests, followed by preparation of a staff analysis recommending how the matter should be resolved. (Water Code Section 1704.1). Unless a written request for hearing is filed within 30 days of mailing the staff analysis, the State Water Board may act on the petition without a hearing. If a hearing is requested, the hearing before the State Water Board is restricted to the issues raised by the exceptions. (Water Code Section 1704.3).

In this case, a field investigation was conducted and a staff report was prepared (1991 Staff Analysis). The permittee requested that the State Water Board reopen the field investigation or conduct a hearing on several unresolved issues, including the availability of water for diversion under Permit 19572. In addition, on August 10, 1991, protestant Howard Harris filed a request for hearing, asking that the State Water Board prevent Jensen's diversions when visible surface flow in the stream does not reach his property and that of other senior claimants.

2.4 Hearing and Stipulation

Pursuant to Water Code Section 1704.3, the hearing notice for the May 27, 1992 hearing identified 11 issues that were unresolved by the staff analysis. As stated in Order No. WR 93-8, however, petitioner's counsel stated at the start of the hearing that the parties had almost stipulated to a "proposed physical solution" to resolve the issues concerning continued diversion of water under Permit 19572. Following a series of brief recesses in the hearing, the participants returned and agreed to various points of the "proposed physical solution" as stated by Mr. Jensen's counsel.

The terms of the proposed physical solution deleted direct diversion rights from Permit 19572, limited diversions to storage to 22.4 acre-feet per annum, required abandonment of one of the previously authorized reservoirs, and imposed a number of other restrictions and monitoring requirements upon Jensen's use of water. In addition, the parties stipulated that Jensen's obligations included those set forth in Jensen's Statement of Position filed with the State Water Board on May 15, 1992. Among other things, the May 15, 1992 Statement of Position proposed that Jensen's reservoirs be limited to one filling per year and agreed to withdrawal of the change petition to add two new points of diversion. (See Order No. WR 93-8, pp. 8-12).

The parties agreed that Jensen should be allowed to divert water to storage only when there was naturally occurring visible surface flow in Harlan Creek on the property owned by CSY Investments. After a two year measuring period to provide for correlation of flows on the CSY Investment property with upstream flows at the Winkle Diversion Dam, the stipulation called upon the parties to agree upon the flow rate which must be present at the Winkle Diversion Dam as a prerequisite to diversion of water under Permit 19572. In the absence of agreement on the appropriate flow rate, the stipulation called upon the parties to submit the issue for determination by the Division of Water Rights.

Although the parties were able to agree on most aspects of the proposed physical solution, they were unable to agree on where the measuring point for "visible surface flow" should be established on the CSY Investments property. Consequently, the parties submitted that remaining issue to the State Water Board for determination and the evidence presented at the hearing focused primarily on that issue.

2.5 Order No. WR 93-8

Prior to adopting Order No. WR 93-8, the State Water Board augmented the record with certain additional evidence provided by parties to the proceeding and Board staff. (See Order No. Wr 93-8, pp 16-19). The additional information included an aerial photo showing the current location of Harlan Creek above the junction with Pescadero Creek, and photographs showing recently installed weirs in Harlan Creek.

In view of the installation of a new weir near the base of the Falls on Harlan Creek, the order approved staff's recommendation to substitute the Falls Weir for the Winkle Diversion Dam for purposes of measuring the flows which must be present in Harlan Creek prior to diversion of water under Permit 19572. No party objected to this change in the location of the permanent measuring point, nor is the issue raised by the petition for reconsideration.

With respect to the location of the interim measuring point on the CSY Investments property, Order No. WR 93-8 specified that the interim measuring point should be at the CSY Grant Line Weir (near the property line between the CSY Investments Property and the Sayers-Harris property). The Grant Line Weir is upstream from an alternative location for the interim measuring point which was suggested by several parties. The alternative suggested location is on Harlan Creek near the intersection with Indian Canyon Road.

In addition to specification of the interim measuring point, Order No. WR 93-8 amended a number of conditions of Permit 19572 in order to implement terms of the physical solution proposed by the parties, to provide for efficient monitoring and administration of water diversions under the permit, and to correctly state the authorized place of use.

3.0 SUMMARY OF PETITION FOR RECONSIDERATION

Ms. Sayers' petition asks for reconsideration of Order No. WR 93-8 based on the petitioner's allegations that there was an unfair hearing, that the order is not supported by substantial evidence, that the order is "contrary to the evidence", and that there is relevant new evidence which could not have been presented.

The petition asks:

1. "that the [interim] measuring point be established at the point where Harlan Creek crosses under Indian Canyon Road, a distance .63 mile downstream of the Grant Line-CSY boundary."
2. "that the CEQA requirements for land clearing be restored."
3. "that the petition for change of place of use, adding 53 acres of vineyard be revoked, and permitted acreage be 33."
4. "that a watermaster be appointed at Jensen's expense to enforce conditions of his permit."
5. "that the water level portion of the definition of surplus as defined in the case of Cienega Water Users v. City of Hollister be restored in place of the three second feet."

4.0 ANALYSIS OF POINTS RAISED IN THE PETITION FOR RECONSIDERATION

The petition for reconsideration alleges that the hearing was unfair and that the order is unsupported by the evidence. The argument that the hearing was unfair is unfounded. The scope of the hearing was limited due to the parties' stipulation to a proposed physical solution. In accordance with that stipulation, the primary issue submitted for the State Water Board's consideration was location of an interim flow measuring point on Harlan Creek as discussed in Section 4.1 below. Petitioner Sayers was

represented by counsel at the hearing, and her counsel did not object to the hearing procedures.

The specific requests for relief stated in the petition for reconsideration (and relevant evidence concerning those requests) is evaluated below.

4.1 Interim Measuring Point

The most significant issue raised by the petition for reconsideration is the location of the interim measuring point, the one significant issue that the parties were unable to resolve in their proposed physical solution at the time of the hearing. Upon review of the record, we do not change our previous conclusion regarding location of the interim measuring point.

The purpose of requiring the presence of surface flow at some location on the CSY property was to ensure that water is reaching other water users on Harlan Creek prior to allowing the diversion of water to storage under the junior rights granted in Permit 19572. There was disagreement among the parties at the hearing, however, as to how far water should be required to flow on the CSY Investments' property before diversions should be allowed under Permit 19572.

We believe that the CSY Grant Line Weir is an appropriate location for the interim measuring point for two reasons. First, the other identified points of diversion on Harlan Creek are located upstream of the CSY Grant Line Weir. Therefore, if surface flow is reaching the CSY Grant Line Weir, it is reasonable to assume that water is available to meet upstream needs.

The second reason that we believe that the CSY Grant Line Weir is an appropriate interim measuring point is that the channel conditions downstream are unsuitable for establishing a "surface flow" requirement at the point where Harlan Creek crosses under Indian Canyon Road. The record shows substantial uncertainty with respect to the location and condition of the Harlan Creek Channel in the area immediately upstream of Indian Canyon Road for a distance of about 3000 feet. This fact is reflected by the differing locations of the channel in the 1957 and 1984 USGS maps.

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Rather than establishing that the crossing of Harlan Creek and Indian Canyon Road is an appropriate location for the interim measuring point, the allegations of the petition for reconsideration tend to do the opposite. Page 8 of the petition for reconsideration, for example, describes the condition of the channel above Indian Canyon Road as follows:

"...the channel between the 14 foot weir and the subject creek-road crossing had been filled in with dirt when the vineyard in the area was removed, and the channel was further obliterated during several years of cultivation. The cultivation disk left dams across the path of the streamflow and spread it out to a width of over 50 feet in places." (emphasis added).

The general condition of the channel as described in the petition for reconsideration is consistent with several photographs of the channel (or former channel) which were included with the petition. In view of the limited amounts of water in Harlan Creek and the condition of the channel above the crossing with Indian Canyon Road, it would not be reasonable to subject an upstream water diverter to a requirement that there be surface flow in Harlan Creek at the crossing with Indian Canyon Road.

The petition for reconsideration is accompanied by a geologist's report concerning the condition of the alluvium in the Harlan Creek area. (Report of Robert L. Rose, "Geology of the Lower Harlan Creek Area"). Based on the geologist's report and evidence in the record, the petition, in essence, argues that establishing the interim measuring point at the CSY Grant Line Weir will not provide for sufficient recharge of water to the Harlan Creek alluvium.

The quantity of water in the alluvium downstream of the CSY Grant Line Weir, however, is not an issue which we are required to resolve under the terms of the proposed physical solution presented by the parties to this Board. If the parties' intentions were to ensure that the alluvium fed by Harlan Creek was fully recharged prior to allowing any diversion of water under Permit 19572, that requirement could have been expressly stated in the stipulation presented at the hearing. The stipulation, however, contains no such requirement. Consequently, the additional evidence provided in Mr. Rose's geological report does not justify reconsideration of Order No. WR 93-8.

In summary, we conclude that the CSY Grant Line Weir is an appropriate location for the interim measuring point and that the presence of flow over that weir will protect the availability of water for diversion from Harlan Creek at the points of diversion on Harlan Creek identified in the record.

4.2 Compliance with CEQA Prior to Land Clearing

The petition for reconsideration requests "that the CEQA requirements for land clearing be restored." The reference to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) appears to be based upon a term included in an earlier draft of an order proposed for the State Water Board's consideration. The term would have required that an environmental impact report be prepared prior to a selective land clearing program by Permittee Jensen. The term was not included in Order No. WR 93-8. The order includes a general provision, however, that no construction or selective clearing shall be commenced and no water shall be collected to storage or used under Permit 19572, until all necessary federal, state and local approvals have been obtained.

When Permit 19572 was issued in 1985, the project was determined to be categorically exempt from CEQA and that determination was not challenged. Order No. WR 93-8 significantly reduces the amount of water that can be diverted under the permit and imposes a number of other restrictions upon water diversions to protect other water users. The actions taken under Order No. WR 93-8 are exempt from CEQA under Section 15304 of Title 14 of the California Code of regulations. Moreover, the proposed physical solution to which petitioner stipulated contains no requirement that the permittee prepare an environmental impact report.

4.3 Petition for Change in Place of Use

Order No. WR 93-8 revised the location of the 100 acre authorized place of use under Permit 19572 to identify the locations of the existing and proposed vineyards as designated on a map filed with the State Water Board dated March 1993. The record was augmented to include the March 1993 map as described in a letter dated October 13, 1993 from the Division of Water Rights to the parties. The petition for reconsideration asks that approval of the revised place of use be revoked and that the authorized place of use under Permit 19572 be limited to 33 acres.

At the hearing, the parties stipulated that Jensen could petition to add a 14 acre portion of his vineyard to the place of use authorized under Permit 19572, provided that he delete another 14 acres from the overall place of use authorized in the permit. It appears from the record that all parties assumed that the other existing vineyard areas were within the authorized place of use. Following the hearing, staff of the Division of Water Rights discovered that the place of use stated in the original application and permit were incorrectly described. Jensen then submitted a corrected map dated March 1993 showing the correct vineyard locations, including the 14 acres which the parties stipulated could be added to Jensen's authorized place of use.

Order No. WR 93-8 revised the place of use authorized under Permit 19572 in accordance with the corrected map. The revised place of use includes the 14 acre area covered by the parties' stipulation as well as a correction of the place of use that was erroneously described in the original application and permit. Water Code Section 1359 provides that the State Water Board may amend a decision or order to correct an obvious oversight without the necessity of a hearing. In addition, Section 795 of Title 23 of the California Administrative Code provides that notice is not required for a petition for a change in place of irrigation use provided that the return flow is unchanged. Thus, whether the correction of the place of use is viewed as a correction under Water Code Section 1359 or as a change for which no notice was required under Section 795 of Title 23, it was appropriate to specify the corrected place of use as was done in Order No. WR 93-8.

4.4 Appointment of a Watermaster

The petition for reconsideration asks "that a watermaster be appointed at Jensen's expense to enforce conditions of the permit." The monitoring and inspection procedure to which the parties agreed at the time of the hearing, however, provided for the parties to designate an agreed upon person responsible for receiving data from Jensen and for inspecting Jensen's water use. The parties' stipulation provides that the cost of any inspections are to be shared equally between Jensen and the protestants, with Jensen to pay 50 percent of the costs and the remaining 50 percent to be divided equally among the protestants. The stipulation did not require that the State Water Board appoint a watermaster to monitor Jensen's diversions.

Order No. WR 93-8 requires that the natural surface flows in Harlan Creek shall be continually measured during the diversion season October 1 through March 31, and that daily flows at the Falls Weir be reported to the State Water Board and the party designated under the parties' stipulation as discussed above. (Order No. WR 93-8, p.22). The order does not, however, address the issues of inspection or how the costs of any inspections shall be paid.

In order to resolve any ambiguity regarding the subject of inspections of Jensen's water use, Condition 16 of Permit 19572 should be amended to include a third provision as specified below in the directive portion of this order. In view of the monitoring and inspection requirements applicable under the conditions of Permit 19572, and the stipulation of the parties to this proceeding, there is no basis for designation of a watermaster at Jensen's expense as requested in the petition for reconsideration.

4.5 Relationship of Diversions Under Permit 19572 to Rights Adjudicated in Cienega Water Users v. City of Hollister

The last action requested in the petition for reconsideration appears to be a request to condition diversions under Permit 19572 upon compliance with the conditions governing diversions by water users subject to the court decree entered in Cienega Water Users v. City of Hollister (San Benito County, Superior Court No. 14797). The Cienega case adjudicated the water rights of specified water users who divert water from Pescadero Creek and its tributaries, including Harlan Creek.

Permittee J.E. Jensen was not a party to the Cienega action and is not bound by the court decree. At some future time, Jensen may be made a party to Cienega action or Jensen and parties to that action may reach some agreement on regulation of Jensen's diversions with respect to rights subject to the Cienega action. In recognition of that possibility, Order No. WR 93-8 reserved jurisdiction to require release of stored water based on lack of flow in Pescadero Creek as agreed to by affected parties or as directed by court order. In view of the fact that Jensen was not a party to the Cienega action, however, we conclude that it would not be appropriate for this Board to subject Jensen's diversions to the restrictions specified in that judgment. Moreover, we note that there was no provision in the proposed physical solution to which petitioner Ann Marie Sayers stipulated that would have subjected Jensen to the provisions of the Cienega judgment.

5.0 CONCLUSION

Based on the information discussed above, the State Water Board concludes:

1. Permit 19572 should be amended to include an additional requirement governing data reporting and inspection of water use as specified below.
2. In order to clarify that storage reservoirs are limited to one filling as agreed to by the parties, Condition 5 of Permit 19572 should be amended as specified below.
3. Except as modified herein, the actions taken in Order No. WR 93-8 are supported by the findings in that order and the additional findings set forth above.
4. The net effect of the amendments to Permit 19572 under Order No. WR 93-8 and this order is to substantially reduce the quantity of water which can be diverted under Permit 19572, and to closely regulate diversions which do occur in a manner consistent with the parties' proposed physical solution.
5. The relief requested in the petition for reconsideration filed by Ann Marie Sayers should be denied and the petition should be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Condition 16 of Permit 19572 shall be amended to include an additional subparagraph as follows:

"(3) The natural surface flows in Harlan Creek shall be continually measured during the diversion season October 1 through March 31, and daily flows at the Falls Weir shall be reported on at least a monthly basis to the designee under Item 7 of the May 27, 1992 stipulation among the parties. If the parties are unable to agree upon a designee to receive the information, the Chief of the Division of Water Rights shall designate a person who shall receive the flow data and who may inspect Jensen's water use without prior notice to Jensen. Fifty percent of any inspection costs shall be paid by Jensen, and the

remaining fifty percent shall be divided equally among the other parties to the May 27, 1992 stipulation. All records provided by Jensen shall be made available to all parties and to the Division of Water Rights upon request."

2. Condition 5 of Permit 19572 shall be amended to read:

"5. The water appropriated shall be limited to naturally occurring surface flow and to the quantity which can be beneficially used, and shall not exceed a total of 22.4 acre-feet per annum to be collected to storage from October 1 of each year to March 31 of the succeeding year. Water diverted under this permit shall be stored in the existing Reservoir 1 (having an approximate capacity of 10 acre-feet) and, upon approval of the Chief of the Division of Water Rights, in Reservoirs 2 and 4. Reservoirs may be filled only once per year.

Water may be collected to storage only during times when there is flow over the CSY Grant Line Weir, and the Harlan Creek Falls Weir, or when flow at the Harlan Creek Falls Weir is equal or greater than the rate agreed to by the permittee and protestants or specified by the Chief of the Division of Water Rights.

Within 60 days of entry of this order, the permittee shall notify and confer with the protestants to determine if there is a suitable location for measuring the presence of surface flow between the Harlan Creek Falls Weir and the CSY Grant Line Weir. Consideration shall be given to a location near the Native American traditional sweat lodge. The permittee shall report back to the Chief of the Division of Water Rights within 60 days regarding location of an alternative measuring point. If a location suitable to the Chief of the Division of Water Rights is identified, the reference to the Harlan Creek Falls Weir shall be replaced with the measuring point location specified by the Chief of the Division of Water Rights.

Following a two year evaluation period, the parties shall by agreement, fix a minimum flow rate to be measured at the Falls Weir required before the permittee may collect water to storage under Permit 19572. If the parties cannot agree as to the proper flow rate, they shall submit the matter to the Division of Water Rights for determination."

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3. The relief requested in the petition for reconsideration filed by Anne Marie Sayers is denied and the petition is hereby dismissed.

CERTIFICATION

The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 2, 1994.

AYE: John Caffrey
James M. Stubchaer
Mary Jane Forster
John W. Brown

NO: None

ABSENT: None

ABSTAIN: Marc Del Piero


Maureen Marche
Administrative Assistant to the Board

P19572

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 19572,)	ORDER: WR 93-8
Issued Pursuant to)	
Application 28156, of)	SOURCE: Various Diversion
)	Points in Harlan Creek
J. E. JENSEN)	Drainage
)	
)	COUNTY: San Benito
)	

ORDER ACCEPTING STIPULATED PHYSICAL SOLUTION,
RESOLVING OUTSTANDING ISSUE,
AND ORDERING PERMIT AMENDMENTS

BY THE BOARD:

1.0 INTRODUCTION

J. E. Jensen filed change and time extension petitions for Permit 19572 (Application 28156). Protests were received and a field investigation conducted by the Division of Water Rights (the Division) on November 13, 1990, in accordance with Water Code Section 1704.1. A Staff Analysis was issued on July 17, 1991. Requests for hearing on unresolved issues were received from the petitioner and protestants pursuant to Water Code Section 1704.3. A public hearing was scheduled in accordance with a hearing notice dated April 2, 1992, which identified 11 key issues. The hearing was held on May 27, 1992, at which time the petitioner and protestants appeared. Shortly after the opening of the hearing, petitioner proposed a physical solution.

The hearing was recessed from time to time to afford the parties opportunity to negotiate. Ultimately a physical solution was agreed to by the parties. However, the physical solution left one important issue unresolved. The parties stipulated that this issue should be resolved by the State Water Resources Control Board (State Water Board) on the basis of the record of the hearing.

2.0 PERMIT 19572

Permit 19572 was issued on July 12, 1985 and authorized J. E. Jensen to appropriate: (1) a total of 25 acre-feet per annum (afa) of storage to be collected from January 1 to December 31 of each year as follows: 5 afa in Reservoir No. 1, 10 afa in Reservoir No. 2, 1.4 afa in Reservoir No. 3, and 1 afa in Reservoir No. 4, and combined total replenishment of 7.6 afa in any of the four reservoirs; (2) 1 cubic foot per second (cfs) by direct diversion from April 1 to September 1 of each year for irrigation purposes; and (3) 500 gallons per day (gpd) by direct diversion from January 1 to December 31 of each year for domestic purposes. The maximum annual amount currently authorized under this permit for all uses cannot exceed 128.5 afa.

Reservoirs 1, 2 and 3 are located on Harlan Creek tributary to Pescadero Creek thence San Benito River in San Benito County. Reservoir 4 is located on an unnamed stream

tributary to Harlan Creek. The permit authorizes domestic and irrigation use on 100 acres within the following areas:

NW1/4 of SE1/4 of Section 23 T14S R5E MDB&M, 20 acres

NE1/4 of SE1/4 of Section 23 T14S R5E MDB&M, 20 acres

SE1/4 of NE1/4 of Section 23 T14S R5E MDB&M, 40 acres

SE1/4 of SE1/4 of Section 14 T14S R5E MDB&M, 20 acres

TOTAL 100 acres

Permit 19572 requires that construction work be completed by December 1, 1988. Complete application of the water to the authorized use shall be made by December 1, 1989.

3.0 CHANGE AND TIME EXTENSION PETITIONS

3.1 Time Extension

On April 10, 1990, the permittee filed a Petition for Extension of Time to complete the project and develop full beneficial use of water. Construction work was said to have been delayed due to insufficient rainfall over the past three years which delayed the planting of vineyards.

3.2 Change

On May 31, 1990, the permittee filed a Petition for Change to add two points of diversion. The proposed new points of

diversion are shallow infiltration galleries which penetrate the alluvial material underlying the streambed of Harlan Creek at locations between Reservoirs 1 and 2 and between Reservoirs 2 and 3. The shallow infiltration galleries have been used to divert water from the subterranean stream during the recent drought because of the lack of surface flow.

3.3 Change Approval Criteria

A petitioner is required to show that: (1) the proposed change will not, in effect, initiate a new right (Title 23, California Code of Regulations, Section 791); and (2) the change will not operate to the injury of any legal user of the water involved (Water Code Section 1702).

4.0 SUMMARY OF THE 1991 STAFF ANALYSIS

4.1 The Record

The Division's 1991 Staff Analysis was completed pursuant to Water Code Section 1704.1, based on staff's evaluation of: (1) the files on the permitted project, (2) the petitions, (3) the protests received pursuant to the notice of

petitions, (4) the November 13, 1990 Field Investigation and (5) other publications or information referenced in the Staff Analysis.

4.2 Recommendations

The Staff Analysis recommended: (1) That the permittee be granted a two year extension of time for the limited purposes of lining the reservoirs to stop leakage, and installing facilities to bypass water to satisfy downstream water rights; (2) denial of the petition for additional time to develop additional acreage for increased irrigation use; (3) revocation of the part of Permit 19572 which authorized direct diversion from April 1 to September 1 and summer replenishment, due to lack of availability of unappropriated water; and (4) denial of the petition to divert water from the underflow.

The Staff Analysis found that appropriation of water pursuant to the existing terms and conditions of Permit 19572 appears injurious to prior rights whenever the annual rainfall, per water year, as measured at the Hollister Gage is less than 12 inches. However, the Staff Analysis recommended implementation of a physical solution to address the water availability problem.

The 1991 Staff Analysis also included a special reserved jurisdiction term for the State Water Board to supervise diversions and use of water and to modify permit terms and conditions in the public interest to protect prior rights. If the physical solution implemented by the recommended permit conditions had proved inadequate to protect prior rights, by determination of the State Water Board, further field investigation was to be initiated and a revised staff analysis prepared and circulated. (Condition 5 in the 1991 Analysis.)

5.0 REQUESTS FOR HEARING

All interested parties were mailed a copy of the 1991 Staff Analysis.

5.1 Permittee requested that the State Water Board reopen the field investigation or conduct a hearing to consider and resolve unresolved issues.

5.2 A request for hearing was also filed by protestant Howard Harris. Harris asked that the State Water Board prohibit diversions to storage when visible surface flow in the streambed does not reach his property and that of other senior claimants. He also requested that the State Water Board impose restrictions on the use of

the infiltration galleries to divert and use water on non-riparian land.

5.3 Key Hearing Issues

Water Code Section 1704.3 restricts the issues to be considered during a hearing on minor protested petitions to those unresolved issues concerning the Staff Analysis, raised in the requests for hearing. Based on the issues identified in the requests for hearing, the April 2, 1992 notice of public hearing identified 11 such key issues.

5.4 Proposed physical solution. At the opening of the hearing, petitioner advised the Hearing Officer that all parties had essentially stipulated to a "Proposed Physical Solution" to resolve the unresolved issues with respect to the Staff Analysis. Petitioner's counsel proposed recess of the hearing to allow the participants to work out their differences (T,6:12-18). The Hearing Officer granted the recess (T,9:13-16), and the hearing was recessed from time to time to allow negotiations. The participants were unable to agree on one significant issue. Therefore, petitioner's counsel proposed a limited hearing on that "one very narrow issue". That outstanding issue "relates to the question of where on Harlan Creek we measure flows for

purposes of determining when Jensen can divert to storage, and there is disagreement on where that point should be." The participants agreed with this approach (T,16:10-21.)

6.0 TEXT OF JENSEN'S PROPOSED PHYSICAL SOLUTION

Since there appeared to be only conceptual agreement on unresolved issues, the Hearing Officer asked petitioner's counsel to "go through the various points step by step." The following 14 items constitute petitioner's final "Proposed Physical Solution" (T,17:20-24).

6.1 Jensen's total storage right under Permit 19572 shall be limited to 22.4 acre-feet per annum, to be diverted to storage from naturally occurring surface flows to storage only during the season of October 1 to March 31. All direct diversion rights under Permit 19572 shall be deleted" (T,21:15-22:8).

6.2 Reservoirs Nos. 1 and 2 on Harlan Creek and Reservoir No. 4 on unnamed creek will be rebuilt to include a four-inch outlet pipe, equipped with a continuous recording measuring device. Data from the device will be made available for inspection by all parties" (T,22:14-23:5).

6.3 Stage recorders will be placed in Reservoirs Nos. 1, 2 and 4, for the purpose of determining changes in storage in the three reservoirs. Data from the recorders will be made available for inspection by all parties." (T,23:9-19).

6.4 "All diversions of water from Reservoirs 1, 2 and 4 will be metered. Data from the meters will be made available for inspection by all parties" (T,24:27).

6.5 "The actions contemplated in Paragraphs 2, 3 and 4 shall be completed on or about September 15, 1992. At the completion of the work, Mr. Jensen's engineer (Mr. James C. Hanson) shall certify to the State Water Board completion of the work. No diversions to storage shall be permitted unless and until Mr. Hanson provides the certification to the State Water Board and the protestants. Mr. Jensen shall allow Mr. Howard Harris to attempt an immediate physical solution regarding Reservoir No. 1, such as drilling a hole in the bottom of the reservoir or installing a siphon device the week of June 1, 1992, or, if Mr. Harris is unable to do this work the week of June 1, 1992 at such later time as is feasible" (T,24:10-25:2 & T,40:15-43:12).

6.6 "Reservoir No. 3 will be abandoned." (That means the dam will be breached--T,25:4-9).

6.7 "Jensen shall provide data from the recording devices described in Paragraphs 2 through 4 (Sections 9.2-9.4 above) on at least a monthly basis. The parties shall designate by written agreement one person who shall be responsible for receiving data provided by Jensen and for inspecting Jensen's water use. Such inspection shall occur without prior notice to Jensen, and such inspections may commence immediately. The cost of such inspection, if any, shall be shared between Jensen and the protestants, Jensen to pay 50 percent of such costs and the protestants to pay the remaining 50 percent on an equal basis as between the protestants. All records provided by Jensen shall be made available to all parties and the Division of Water Rights upon request" (T,29:2-30:4 & T,39:7-40;5).

6.8 "Jensen recognizes the principle that diversions of water from Harlan Creek to storage shall occur only at such time as there is some naturally occurring visible surface flow in Harlan Creek on the property owned by CSY Investments hereinafter the "CSY measuring point". Jensen shall not divert water from Harlan Creek to storage when there is no visible surface flow at the CSY measuring point. This requirement will be subject to a two-year trial period. At the end of such two-year trial period, the parties shall, by agreement, fix a minimum surface flow rate to be measured at the

Winkle Diversion Dam on Harlan Creek for purposes of determining when Jensen is entitled to divert to storage, which flow rate shall be correlated to the existence of visible surface flow at the CSY measuring point. If the parties cannot agree as to the proper flow rate at Winkle Diversion Dam, they shall submit the matter to the Division of Water Rights for determination" (T,30:6-31:5).

6.9 "Jensen shall, under no circumstances, utilize water from Harlan Creek or the unnamed creek by direct diversion on non-riparian lands" (T,30:7-10).

6.10 "Jensen shall devise a system for insuring that water utilized by direct diversion from Harlan Creek or the unnamed creek (under claim of riparian right) is not utilized on non-riparian lands. The proposed system will be submitted to the parties for approval within 60 days and then submitted to the State Water Board" (T,31:12-32:13).

6.11 "Jensen will examine the feasibility of a large capacity (50-100 acre-feet) off-stream storage reservoir within the Harlan Creek watershed" (T,32:14-18).

6.12 "The parties agree that Jensen may petition to add the 14-acre Jensen vineyard to the authorized place of use of Permit 19572, and they will not protest such petition, provided the petition seeks to delete from the place of use under Permit 19572, 14 acres of land selected by Jensen at his sole discretion" (T,32:22:36:5).

6.13 "Jensen's obligations under this agreement are in addition to those set forth in the Statement of Position filed by Jensen in this proceeding on May 15, 1992" (T,36:7-37:12).

6.14 "Nothing in this agreement constitutes an admission by Jensen, expressed or implied, as to the validity of any water right claimed by any protestant. Nothing in this agreement constitutes a waiver or constitutes an admission by any protestant as to the validity of any riparian water right claimed by Jensen. Nothing in this agreement shall constitute a waiver by any party of any remedy to which the party may be entitled to by law" (T,37:14-38:5).

7.0 AVAILABILITY OF UNAPPROPRIATED WATER

7.1 Pre-hearing Statement

Notwithstanding previous correspondence, petitioner's May 15, 1992 pre-hearing Statement of Position accepted essentially all of staff's proposed permit modifications including: 1) the reduction in amount of his storage right, 2) elimination of the right to refill his reservoirs, and 3) deletion of his direct diversion rights under Permit 19572. Petitioner also withdrew his change petition to utilize the two shallow wells under Permit 19572.

7.2 Water Availability Stipulation

During the May 27, 1992 State Water Board hearing, the parties agreed that up to 22.4 acre-feet per annum is available for collection to storage in some years. However, they could not agree on a location where some naturally occurring visible surface flow in Harlan Creek must exist as a condition for Mr. Jensen's collection of water to storage. (See Section 9.0, Measuring Point Issues.)

8.0 DISCUSSION OF UNRESOLVED ISSUES

8.1 Background

In Mr. Harris's August 10, 1991 request for hearing he states: "Evidence should be received on what the stream

behavior is in normal years, and agreement reached on how far the surface flow should go before any diversions to storage are made. It would not be fair to Jensen to require the stream to reach Pescadero Creek because it usually disappears in the sand just downstream from a Sycamore tree on the west side of the road and the Almaden Ranch" (Staff 1).

8.2 Reserved Jurisdiction

As stated above, the unresolved issue which the parties asked the State Water Board to resolve following the hearing concerns identifying the location on Harlan Creek where surface flow should be measured for purposes of determining when the petitioner may collect water to storage without injury to prior rights. It appears that the proposed Physical Solution should be tried for at least two years, with jurisdiction reserved to modify terms and conditions of the permits as appropriate.

8.3 Proposed Physical Solution

During the hearing, petitioner's Proposed Physical Solution, including its reference to petitioner's May 15, 1992, Statement of Position, gained the acceptance of all parties, except on Key Hearing Issue

No. 5 concerning prohibiting collection of water to storage until there is visible surface flow in Harlan or Pescadero Creeks at a specified location (T,45:8-45:13 & T,48:18-24). Petitioner insisted that the proposed interim location of the CSY Measuring Point for visible surface flow be at the CSY grant line (T,49:8-51:7). The protestants insisted that the measuring point be near a large "Sycamore Tree" near where Harlan Creek crosses the road downstream of the CSY grant line (T,59:17-63:20).

9.0 MEASURING POINT ISSUES

9.1 Requirements

The primary issue for the State Water Board to consider in resolving Key Hearing Issue 5 is the determination of when surface water is available for collection to winter storage in petitioner's existing reservoirs without injury to downstream prior rights. During the hearing, the parties agreed that in some years sufficient water is available in Harlan Creek to allow one filling of Jensen's reservoirs with up to 22.4 acre-feet of water (T.21:15-21). They also agreed that Jensen will examine the feasibility of a large capacity (50-100 acre-feet) off-stream storage

reservoir within the Harlan Creek watershed (T,32:15-18). However, the disagreement came in establishing where surface flow must exist (downstream) in Harlan Creek before Jensen is allowed to collect water to storage.

9.2 Hearing Record Augmentation

By letter dated January 28, 1993, Attorney Virginia A. Cahill submitted an aerial photo showing the current location of Harlan Creek. In addition, Ms. Cahill submitted a map from the U.S. Department of Agriculture, Soil Conservation Service November 1969 report "Soil Survey, San Benito County California" which shows the present channel location of Harlan Creek.

By letter dated February 5, 1993, parties were advised that the State Water Board would augment the record to include the aerial photo and Department of Agriculture report showing the present location of the streams and the Saling Well unless written objections were received by February 16, 1993. No objections were received.

9.3 Hydraulic Continuity and Underflow Issues

Comparison of the two USGS Quadrangle Maps indicate the Harlan Creek intermittent watercourse apparently dried

up or was diverted, after 1957 and before 1984, indicating a lack of natural surface flow hydraulic continuity between permittee's point of diversion on Harlan Creek and Pescadero Creek prior to Jensen's diversions from the underflow during the recent drought.

9.4 The Measuring Point

Item 8 of the petitioner's Proposed Physical Solution had as its final objective to establish, within two years, a minimum surface flow rate at the Winkle Diversion Dam for determining when petitioner can collect water to storage in any of the three reservoirs.

The Winkle Diversion Dam is located downstream of Jensen's Reservoir No. 1, upstream of the intervening Harris/Sayers and Sayers parcels, and about a mile and a quarter upstream of the Land Grant Boundary Line. The parties agreed to replace the proposed natural visible surface flow requirement at the CSY measuring point, in two years, with the surface flow rate measured at the Winkle Diversion Dam. However, they were unable to agree on where the CSY measuring point should be located or how to correlate the flows. Staff met with the parties on February 24, 1993, however, the

parties were unable to agree on the measuring point or other conditions proposed by staff.

10.0 SITE INSPECTION AND RECOMMENDATIONS

10.1 On August 10, 1993, Staff Engineer Dave Cornelius conducted an informal field investigation of the project and the resources affected by the petitions. In the morning, he was accompanied by Mr. Jensen's engineer, John Hanson, and Dennis English who is preparing a report on the project area under Dr. Curry at U.C. Santa Cruz. They inspected the Harlan Creek watercourse at the Winkle Diversion Dam and near Reservoir No. 1. The flow measurement equipment and water conveyance facilities associated with Reservoir No. 1 and old Reservoir No. 4 were also inspected.

In the afternoon of August 10, 1993, Mr. English showed Mr. Cornelius the Harlan Creek Falls (Falls), the new flow measurement weir installed by Mr. Harris near the base of the Falls and the additional weirs set in Harlan Creek at several locations between the Falls and the Land Grant Boundary Line (CSY Grant Line), and at CSY Grant Line. All of these weirs have been installed by Mr. Harris since the close of the hearing record.

10.2 In light of the observations and discussions with parties, staff recommends that the Winkle Diversion Dam gage identified in Mr. Jensen's Proposed Physical Solution (Item No. 8) be replaced with a permanent flow recorder at the new weir near the base of the Falls in Harlan Creek adjacent to Ms. Sayers' home. The flow requirement at the CSY Grant Line would be used to set the flow rate as measured at the Falls Weir, which must be present in order for Mr. Jensen to collect water to storage. The permanent bypass flow rate at the Falls (when Mr. Jensen can collect to storage) would be set by order of the Chief of the Division of Water Rights, after staff evaluation of two years of flow records at the Falls and flow at the CSY Grant Line Weir.

10.3 By letter dated October 13, 1993 the record for the May 27, 1992 hearing was opened to include additional information submitted by Mr. Jensen's engineer on May 25, 1993 and photographs of the CSY Grant Line Weir and the Harlan Creek Falls Weir. No one objected to including the specified information for the limited purpose of resolving the issue concerning the location of the measuring point as discussed in Section 9.4 above. Therefore, that information has been included in the hearing record.

11.0 CONCLUSIONS

- 11.1 In a hearing resulting from a challenge to a staff analysis on a minor protested petition (Water Code Section 1704 et seq.), the hearing is restricted to unresolved issues raised by the parties in their request(s) for Hearing (See Section 5.1 and 5.2 above).
- 11.2 Most of the significant unresolved issues raised in the requests for hearing on the 1991 staff analysis were resolved by Jensen's Proposed Physical Solution and the resulting required permit amendments. Since the parties were unable to agree on where Harlan Creek flows should be measured for purposes of determining water availability for storage during the interim flow correlation period, the Hearing Officer asked staff to work to resolve that issue and corollary issues in a draft Board order.
- 11.3 On February 8, 1993, staff circulated a revised draft order and met with the parties on February 24, 1993. The February 8, 1993 draft order did not resolve the remaining issues between the parties.
- 11.4 We conclude that the October 13, 1993 Staff Recommendation to establish a recording gage and set minimum flow rate at the Falls Weir constitutes the

most reasonable method of determining when naturally occurring surface flow is available for collection to storage in Mr. Jensen's Reservoirs on Harlan Creek under Permit 19572.

- 11.5 Based on the augmented hearing record, it is further concluded that until the Falls Weir flow rate is finally established by the Chief of the Division of Water rights, at least two years of streamflow records are needed in order to compare the flow at the Falls Weir with the flow present at the CSY Grant Line Weir.
- 11.6 In view of: (1) the competition for water within the basin, (2) questions regarding the amount of water available for diversion, particularly in dry years, and (3) the fact that the dams for Reservoirs 2, 3 and 4 have been breached, approval of the Chief of the Division of Water Rights should be required prior to constructing any new reservoirs under Permit 19572.
- 11.7 The State Water Board concludes that good cause has been shown for a time extension as specified below in this order. The time extension is justified for the reasons discussed in the July 1991 Staff Analysis, and to comply with the provisions of Mr. Jensen's Proposed Physical Solution.

11.8 The State Water Board concludes that Mr. Jensen's petition to add the points of diversion from the underflow of Harlan Creek should be denied for the reasons discussed in the July 1991 Staff Analysis, and to comply with the provisions of Mr. Jensen's Proposed Physical Solution.

11.9 The State Water Board concludes that the permitted size of Reservoir No. 1 should be increased from 5 acre-feet to 10 acre-feet pursuant to recommendations contained in the July 1991 Staff Analysis.

ORDER

1. The May 31, 1990 petition to authorize use of the two existing underflow galleries in Harlan Creek within the South 1/2 of Section 23, Township 14 South, Range 5 East, MDB&M as points of diversion under Permit 19572 is denied.
2. The location for the interim CSY Measuring Point pursuant to Item 8 in petitioner's Proposed Physical Solution shall be at the CSY Grant Line Weir.
3. The natural surface flows in Harlan Creek shall be continually measured during the diversion season October 1 through March 31, and daily flows at the Falls Weir reported to the State Water Board and the designee under Item 7 of Jensen's Proposed Physical Solution.

4. Prior to rebuilding Dams 2 and 4, or submittal of a new application, (pursuant to Item 11 of petitioner's Proposed Physical Solution), permittee shall submit a project feasibility report acceptable to the Chief of the Division of Water Rights and provide copies of any such project feasibility report to the protestants at the same time permittee first submits such report to the State Water Board.

5. Permit 19572 shall be amended as follows:

(a) Condition 2 of the permit be amended to delete the existing point of diversion (3) at Reservoir # 3.

(b) Condition 3 of the permit be amended to delete domestic use.

(c) Condition 4 of the permit be deleted and amended by replacement of paragraph (1) below with paragraph (2) below:

(1) The place of use is shown on map filed with the State Water Board.

(2) The place of use is as shown on the map filed with the State Water Board dated March 1993.

(d) Condition 5 of the permit be amended to read:

5. The water appropriated shall be limited to naturally-occurring surface flow and to the quantity which can be beneficially used, and shall not exceed a total of 22.4 acre-feet per annum to be collected to storage from October 1 of each year to March 31 of the succeeding year in Reservoir 1 and, upon approval of the Chief of the Division of Water Rights, in Reservoirs 2 and 4.

Water may be collected to storage only during times when there is flow over the CSY Grant Line Weir, or when flow at the Harlan Creek Falls Weir is equal to or greater than the rate specified by the Chief of the Division of Water Rights.

Following a two year evaluation period, the parties shall, by agreement, fix a minimum surface flow rate to be measured at the Falls Weir required before the permittee may collect water to storage under Permit 19572. If the parties cannot agree as to the proper flow rate, they shall submit the matter to the Division of Water rights for determination.

(e) Existing Condition 7 of the permit be deleted.

(f) Condition 8 of the permit be amended to read:

8. Complete application of the water to the authorized use shall be made by December 31, 1996.

(g) Existing Condition 13 of the permit be deleted.

(h) Conditions 16 through 22 be added to the permit as follows:

16. Permittee shall comply with the following provisions which are derived from the stipulation between permittee and other participants at the State Water Board hearing on May 27, 1992.

(1) Continuous Stage recorder(s) will be placed in any reservoir storing water under this permit, for the purpose of determining times of changes in storage in the reservoir(s). Data from the reservoir(s) will be made available for inspection by all parties.

(2) All diversions of water from the Reservoir(s) will be metered. Data from the meters will be made available for inspection by all parties.

17. Permittee shall furnish evidence which substantiates that the bypass facilities and outlet pipes (with measuring devices approved by the Chief Division of Water Rights) have been installed through the dams prior to collection of any water to storage in that reservoir. Evidence shall include photographs showing completed works in accordance with the plan of operation by a registered civil or agricultural engineer, for each reservoir as approved by the Chief of the Division of Water Rights for each reservoir.
18. No water shall be diverted under this permit until permittee has installed devices, satisfactory to the State Water Board, which are capable of measuring the reservoir withdrawals, the flow(s) or release(s) required by the conditions of this permit. Said measuring devices shall be properly installed and maintained at all times.
19. The State Water Board reserves jurisdiction to include a storage release term in this permit based on lack of flow in Pescadero Creek as agreed to between the parties or as directed by a court of law.

20. This permit does not authorize collection of water to storage outside of the specified diversion season to offset evaporation and seepage losses or for any other purpose.

21. No construction or selective clearing shall be commenced and no water shall be collected to storage or used under this permit until all necessary federal, state and local approvals have been obtained.

CERTIFICATION

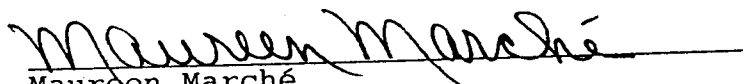
The undersigned, Administrative Assistant to the State Water Board, does hereby certify that the forgoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 1993.

AYE: John Caffrey
Mary Jane Forster
John W. Brown

NO: None

ABSENT: Marc Del Piero
James M. Stubchaer

ABSTAIN: None


Maureen Marché
Administrative Assistant to the Board

STATE OF CALIFORNIA
~~THE RESOURCES AGENCY~~
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19572

Application 28156 of J. E. Jensen

11300 Cienga Road, Hollister, California 95023

filed on June 7, 1984, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

(1) (2) & (3) Harlan Creek

Pescadero Creek thence

San Benito River thence

Pajaro River .

(4) Unnamed Stream

Harlan Creek

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
(1) South 77 feet and East 1,750 feet from center of Section 23 (Reservoir #1)	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	23	14S	5E	MD
(2) South 76 feet and East 790 feet from center of Section 23 (Reservoir #2)	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	23	14S	5E	MD
(3) North 55 feet and East 359 feet from center of Section 23 (Reservoir #3)	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	23	14S	5E	MD
(4) North 425 feet and East 300 feet from SE corner Section 14 (Reservoir #4)	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	14	14S	5E	MD

County of San Benito

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Domestic						
Irrigation	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	23	14S	5E	MD	20
	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	23	14S	5E	MD	20
	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	23	14S	5E	MD	40
	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	14	14S	5E	MD	20
					Total	100

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed: (1) a total of 25 acre-feet per annum to be collected from January 1 to December 31 of each year as follows: 5 acre-feet per annum in reservoir No. 1, 10 acre-feet per annum in reservoir No. 2, 1.4 acre-feet per annum in reservoir No. 3, and 1 acre-foot per annum in reservoir No. 4, and replenishment of 7.6 acre-feet per annum; (2) 1 cubic foot per second by direct diversion from April 1 to September 1 of each year for irrigation purposes; and (3) 500 gallons per day by direct diversion from January 1 to December 31 of each year for domestic purposes. The maximum amount diverted under this permit for all uses shall not exceed 128.5 acre-feet per year.

(0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall be completed by December 1, 1988.

(0000007)

8. Complete application of the water to the authorized use shall be made by December 1, 1989.

(0000008)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

11. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation. The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

13. The equivalent of the continuous flow allowance for any 30-day period may be diverted in a shorter time, provided there be no interference with other rights and instream beneficial uses; and provided further that all terms or conditions protecting instream beneficial uses be observed. (0000027)

14. During the season specified in this permit, the quantity and rate of water directly diverted and used for irrigation purposes under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion specified in the permit. If the permittee's claimed right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights for irrigation purposes under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the Board.

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law. (0000021)

15. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of permittee. (0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: JULY 12 1985

STATE WATER RESOURCES CONTROL BOARD

Raymond Wash

Chief, Division of Water Rights